lengths to disregard the FAA and shield Ms. Saylor from her arbitration commitments is confirmed when one notes that the court failed to acknowledge the actual contracting parties and the consideration exchanged. Though Ryan's is a third party beneficiary of Ms. Saylor's contract, the actual parties to the contract at issue are Ms. Saylor and EDSI. *See Saylor*, 613 S.E. 2d at 917. The consideration flowing between these parties is specifically set forth in the contract and can be summarized as Saylor agreeing to submit all employment-related disputes with the employer to arbitration under the EDSI system and rules in exchange for EDSI providing an unbiased arbitration forum, impartial rules and procedures, a fair hearing and decision together with the additional benefits of a substantially quicker, less burdensome and less expensive procedure for resolution of claims. *See Saylor*, 613 S.E. 2d at 917-18.

The Supreme Court of Appeals of West Virginia's failure to properly identify the actual parties to the contract and to evaluate the consideration flowing between these parties is a clear demonstration of its commitment to improperly relieve Ms. Saylor of her arbitration contract. Such an obvious mischaracterization of the contract terms in order to achieve a predetermined result that ignores the FAA and the federal policies it embodies should not be tolerated.

With this Court's reluctance to review the application of state law, state courts can shield their anti-arbitration decisions from correction by simply justifying them with a misapplication of state law or a perversion of the contract terms. However, the state courts must not be allowed to mask hostility to arbitration and escape the mandates of the FAA by having a free hand to misapply state contract law principles or contract terms as an excuse to refuse to compel arbitration. The Supreme Court of Appeals of West

Virginia's patent hostility to arbitration is "far out of step with our current strong endorsement of the federal statutes favoring [arbitration]." *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 481 (1989). "The FAA provides no basis for disfavoring agreements to arbitrate statutory claims by skewing the otherwise hospitable inquiry into arbitration." *Mitsubishi Motors*, 473 U.S. at 627. This Court should reverse the Supreme Court of Appeals of West Virginia's decision and articulate a required analytical framework that mandates the legitimate application of state contract principles in order to advance the often repeated federal policy favoring arbitration of disputes.

III. The Supreme Court of Appeals of West Virginia Improperly Refused Enforcement of the EDSI Arbitration Contract Based on Unspoken But Obvious Animosity Towards Mandatory Arbitration.

The Supreme Court of Appeals of West Virginia's decision in this matter was shaped by an obvious animosity toward mandatory arbitration in the employment context. While the lower court's protective attitude toward Ms. Saylor and its willingness to pervert West Virginia contract law to create the appearance of support for its decision provides ample evidence of this hostility to arbitration, the abundance of unsupported factual findings announced by the lower court confirm this conclusion. For instance, the lower court wrote:

> (1) "The terms of Petitioner's Agreement were not negotiable and clearly weighed in favor of EDSI and the companies with whom EDSI contracted to provide arbitration services." *Saylor*, 613 S.E. 2d at 922;

(2) "[E]ven if an applicant in Petitioner's position would be able to manage to afford an attorney, doing so would hardly leave a favorable impression with the company to which she was applying. The 'right' afforded to seek legal advice is illusive at best." *Id.*; and

(3) "These examples support our finding the arbitration agreement unenforceable as an unconscionable contract of adhesion in that they demonstrate a flagrant disparity in bargaining power, confirm a lack of meaningful alternatives available to Petitioner and establish the omission of critical terms and conditions in the arbitration document." *Id.* at 922-23.

A careful review of the lower court's decision reveals no support for the above findings. The lower court makes no meaningful attempt to explain how the EDSI arbitration contract is "clearly" weighed in favor of EDSI or the companies that use its services. There is no explanation whatsoever for the finding that an applicant's decision to have the arbitration agreement reviewed by an attorney would create a negative impression with the potential employer. The lack of factual support for these pronouncements renders indefensible the lower court's ultimate conclusions that Ms. Saylor was the victim of a gross disparity of bargaining power and lacked meaningful alternatives. Finally, the lower court failed even to make an effort to support or explain its conclusion that the EDSI arbitration agreement omitted critical terms and conditions. The Supreme Court of Appeals of West Virginia's refusal to compel arbitration based on unsupported findings of fact and perversions of West Virginia contract law is ample evidence of precisely the sort of anti-arbitration hostility that this Court has repeatedly rejected.

CONCLUSION

Based on the foregoing, EDSI respectfully requests that this Court grant Ryan's petition for writ of certiorari and reverse the Supreme Court of Appeals of West Virginia's erroneous decision in this matter.

Respectfully submitted,

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